

APPENDIX 10
Notice of Proposal as Filed with OAL

PRN 2003-213
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INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Health Benefits Plans

Proposed Amendments: N.J.A.C. 11:22-1.2, 1.9 and 1.10.

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17B:30-13.1, 17B:30-23 et seq. and 26:24-15b

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-

Submit comments by August 1, 2003 to:

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The agency proposal follows:

Summary

N.J.A.C. 11:22-1 et seq., Health Benefit Plans – Prompt Payment of Claims, establish standards for the prompt payment of claims by carriers or their agents relating to health benefit plans and dental plans issued by those carriers. N.J.A.C. 11:22-1.9 requires that various quarterly and annual reports be submitted by these carriers. The Department of Banking and Insurance (“Department”) is now proposing to amend these provisions. The major focus of the proposed changes is N.J.A.C. 11:22-1.9(a) and (b). Subsection (a) requires the filing of a report (Appendix A) on a quarterly basis, on the timeliness of claims payments. N.J.A.C. 11:22-1.9(a)

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also requires the filing of a quarterly report (Appendix B) on the reasons for claim denials and the late payment of claims. Although Appendix B reports are filed quarterly, the filing in the fourth quarter is an annual report which, pursuant to subsection (b), must be audited.

The Department is amending N.J.A.C. 11:22-1.2 to provide a definition of an organized delivery system ("ODS"), which is included in the definition of a "payer" at N.J.S.A. 17B:30-26.

The Department is amending N.J.A.C. 11:22-1.9(a) and (b) to also include references to "ODS" in order to implement the requirements imposed by N.J.S.A. 17B:30-26 et. seq., which subject such systems to the reporting requirements of these rules.

The Department is also amending N.J.A.C. 11:22-1.9 to permit carriers with a minimal amount of health insurance business in New Jersey to request an exemption from the requirement to file an audited annual report as currently required by N.J.S.A. 17B:30-30 and N.J.A.C. 11:22-1.9(b). Presuming they meet the criteria under which such requests will be evaluated, the granting of such an exemption will enable qualifying companies to avoid the substantial expense of having their annual report audited by a private auditing firm. This "de minimis" exception to the requirement that all annual reports submitted pursuant to N.J.S.A. 17B:30-30 be audited recognizes that, in certain cases, no substantial public policy considerations are realized by having the annual reports of health insurance companies which write a minimal volume of health insurance business in New Jersey independently audited.

N.J.A.C. 11:22-1.9(e) is a new provision which establishes three conditions that must be satisfied in order for a carrier to apply for an exemption from the requirements to have the annual report audited and to file the auditor's report with the audited annual report. These conditions are: 1) the Appendix B annual report has been filed; 2) any required Appendix A reports have

been filed; and 3) the total New Jersey premium of the carrier (on a consolidated basis) is less than \$5 million.

Proposed N.J.A.C. 11:22-1.9(f) is a new provision which provides the criteria that the Commissioner shall apply when considering a carrier's request for an exemption from the requirements to have the annual report audited and to submit the auditor's report with the annual report.

In new subsection N.J.A.C. 11:22-1.9(g), the Department is permitting a carrier that has been granted an exemption from filing an audited report to also be exempt from filing quarterly Appendix A and B reports the following year. However, the carrier would still be required to file an audited annual Appendix B report for that year unless another exemption was obtained.

The Department is amending N.J.A.C. 11:22-1.10 to include references to "ODS" in order to clarify that they are also subject to that provision.

The Department's rule proposal provides for a comment period of 60 days, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments will have a positive impact on insurers. Those insurers that are able to satisfy the criteria for an exemption will no longer have to incur the costs associated with providing the Department with the report of an auditing firm detailing the reasons for claims denial and late claims payments. Furthermore, such carriers would not incur the costs of filing quarterly reports for the subsequent year. Because the amount of business written by these carriers is small in relation to the entire health insurance market, and because the Department

will continue to monitor these companies on an annual basis, there is minimum, if any, impact on the Department's ability to monitor the timeliness of claim payments.

Economic Impact

The proposed amendments will have a positive economic impact on those insurers that are able to satisfy the conditions for obtaining an exemption. Based on current premium volume, the Department estimates about 30 carriers out of the approximately 80 carriers who file the report might qualify to apply for the exemption.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal standards or requirements.

Job Impact

The Department does not anticipate that the proposed new rule will result in the generation or loss of jobs.

Agriculture Industry Impact

The Department does not expect any impact on the agriculture industry from the proposed new rules.

Regulatory Flexibility Analysis

The proposed amendments may apply to any carrier that constitutes "a small business" as that term is defined in the Regulatory Flexibility Act at N.J.S.A. 52:14B-16 et seq. The Department's proposed new rules do not add or require any new reporting, record-keeping or other compliance requirements. Insurers will not need to employ professional services in order to comply with the new rule provisions.

The Department believes that, unless the conditions specified in the proposed amendments are satisfied, it continues to be appropriate to require the submission of an audited annual report in accordance with N.J.S.A. 17B:30-30 and N.J.A.C. 11:22-1.9. Carriers of all sizes enter into contracts with providers and insureds to pay claims promptly. When payment does not occur because a claim is denied, it is appropriate for payers to provide information on the reasons why a claim was disputed or denied, regardless of the carrier's size. However, the Department has determined that exempting companies with a minimal amount of health insurance business from the requirement that such reports be independently audited is consistent with the intent of the statute, which is to ensure the prompt payment of claims and the adequate tracking and accurate reporting of statistically significant information.

Smart Growth Impact

The proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]);

11:22-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

“Organized Delivery System” or “ODS” means an organized delivery system that is either certified or licensed pursuant to N.J.S.A. 17:48H-1 et seq.

. . .

11:22-1.9 Reporting requirements

(a) A carrier **or ODS** shall report to the Department [quarterly] on the timeliness of claims payments in the format set forth in Appendix A to this subchapter, incorporated herein by reference, **on a quarterly basis**, and on the reasons for denial and late payment of claims in the format set forth in Appendix B to this subchapter, incorporated herein by reference, on an annual and quarterly basis. Instructions for these documents are provided in subchapter Appendix A-1 and Appendix B-1, respectively, incorporated herein by reference. Due dates for the reports are as follows: May 15 for the first quarter; August 15 for the second quarter; November 15 for the third quarter; and March 31 for the fourth quarter for Appendix A and the annual report for Appendix B.

(b) The annual report **on the reasons for denial and late payment of claims** shall be audited by a private auditing firm at the expense of the carrier **or ODS**. The annual report shall be accompanied by the report of the auditing firm that reviewed the report. In addition to the

Department, copies of the audited annual report shall be sent to the Governor and the majority and minority offices of the Legislature.

(c) - (d) (No change.)

(e) A carrier or ODS may request an exemption from the requirements to have the annual report required by subsection (b) above audited and to submit a report of the auditing firm. This exemption must be obtained on an annual basis. Such an exemption may be granted if the carrier or ODS meets the following conditions:

1. The carrier or ODS must file the annual Appendix B report required by subsection (a) in a timely manner. The report shall be accompanied by a request for exemption from the requirements that the report be audited and that a report of the auditing firm be submitted;

2. The carrier or ODS shall have filed the four quarterly Appendix A reports required by subsection (a) in a timely manner, unless the carrier or ODS was exempted from such filing pursuant to (g) below; and

3. The annual premiums earned by the carrier or ODS in New Jersey for all health benefits plans as defined in N.J.A.C. 11:22-1.2 were less than \$5 million in the year covered by the annual report for which the exemption is requested. The carrier or ODS shall provide, in its request for exemption, a reconciliation of these premiums to the net earned premiums for "health benefit plans" as defined at N.J.A.C. 11:4-23A.2 and as reported to the Commissioner pursuant to N.J.A.C. 11:4-23A.8(a)1. The \$5 million limit shall be applied on a consolidated basis for companies under common control.

(f) After the commissioner has reviewed the annual report and the request for exemption, the Commissioner shall either grant or disapprove the request. Any request

meeting the conditions of (e) above shall be deemed granted 30 days after its receipt by the Commissioner unless disapproved. The Commissioner may disapprove a request for one or more of the following reasons:

1. The request does not meet the enumerated conditions of subsection (e);
2. The carrier or ODS has not filed a report, made a refund, or paid an assessment required by law applicable to a carrier or ODS; or
3. The Commissioner finds that an audit is necessary to verify the accuracy of the report or to otherwise meet the purposes of N.J.A.C. 11:22-1.9 and N.J.S.A. 17B:30-12 et seq.

(g) A carrier or ODS which has obtained an exemption from filing an audited annual report under subsections (e) and (f) shall also be exempt from filing quarterly Appendix A and B reports for the year following the year for which the exemption was obtained. If the carrier or ODS seeks an exemption from filing an audited annual report for the year following the year for which such an exemption was previously obtained, a separate request for an exemption shall be required for the audited annual report for that ensuing year.

11:22-1.10 Remediation/penalty

(a) Upon review of the reports required by N.J.A.C. 11:22-1.9, the Commissioner may require that the carrier **or ODS**, at its own expense:

1. - 2. (No change.)

(b) The Commissioner may impose a civil penalty of not more than \$10,000 upon the carrier, to be collected pursuant to "the penalty enforcement law," N.J.S.A. 2A-58-1 et seq. if, following the remediation measures in (a) above, the Commissioner determines that:

1. (No change.)
2. A carrier, ODS or [its] the agent of a carrier or ODS has failed to pay interest as required pursuant to N.J.A.C. 11:22-1.7.

5/1/03
Date


Holly C. Bakke
Commissioner

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